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In re Application of
Wodnicki
Application No. 10/751,290
Filed: January 1, 2004
Attorney Docket No. 126339

OFFICE OF PETITIONS
ON PETITION

This decision concerns the June 21, 2004 "Petition Requesting Corrected Filing Date" which is being properly treated as a petition under 37 CFR 1.10(d).

The petition is **DISMISSED**.

The petition requests an earlier filing date of December 31, 2003 rather than the presently accorded filing date of January 1, 2004, on the basis that the application was deposited on December 31, 2003 in the U.S. Postal Service (USPS) "Express Mail Post Office to Addressee" service ("Express Mail") pursuant to the requirements of 37 CFR 1.10.

37 CFR 1.10(d) requires, *inter alia*,¹ a showing, establishing that the requested filing date was the date of deposit of the application in the "Express Mail" service prior to the last scheduled pickup for that day, and, corroborated by evidence from the USPS.²

The Office notes the following:

- (1) The application transmittal contains a "Certification under 37 CFR 1.10" indicating that the application would be deposited in the "Express Mail" on December 31, 2003 under mailing label number "EV270963240US." However, the petition has not included a true copy of this mailing label. The signed Certificate of Mailing only suggests an intended deposit of the application papers in the "Express Mail" service on that day.
- (2) The petition alleges that the USPS substituted counsel's mailing label with one bearing the number "ER714348072US" and the "date-in" of January 1, 2004. Unfortunately, the USPTO has no authority or basis to contradict information provided by the USPS. Such an allegation can only be dealt with, and resolved by, the USPS.

¹ 37 CFR 1.10(d)(1) requires that the petition be filed promptly after the person becomes aware of the incorrect "date-in" entry by the USPS. This requirement is considered met.

² 37 CFR 1.10(d)(3); MPEP section 513 (Rev. 2, May 2004).



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